

Hon Dr David Clark

MP for Dunedin

Minister of Commerce and Consumer Affairs

Minister for the Digital Economy and Communications

Minister for State Owned Enterprises

Minister of Statistics

Minister Responsible for the Earthquake Commission



11 MAR 2021

Andy Coupe
Chair
Takeovers Panel
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Wellington 6011
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Dear Andy

ANNUAL LETTER OF EXPECTATIONS FOR 2021/22

I am writing to convey my strategic and performance expectations for the Takeovers Panel (the Panel) in relation to the 2021/22 financial year.

Contributing to Government priorities and what this means for the Panel

In addition to keeping New Zealanders safe from COVID-19, the Government's priorities this year include accelerating our economic recovery by building a productive, sustainable and equitable economy. Wellbeing will continue to inform the Government's view of success as we focus on creating a fairer New Zealand through sustainable and inclusive growth.

The Panel and the Takeovers Code (Code) make an important contribution to this, by ensuring shareholders in change-of-control transactions are provided with enough information to make informed and timely decisions. I expect the Panel to continue to contribute to these priorities and work together with other agencies and parties that have a stake in achieving these priorities.

Specific expectations for the Panel

I would like to take this opportunity to thank the Panel for its hard work over the last year. 2020 was a difficult year for us all and I am grateful for the way the Panel has maintained high standards of governance and robust operating systems throughout.

During 2021/22, my specific expectations are that the Panel:

- continues to effectively enforce the Code, and efficiently undertake the no-objection process for Code company schemes under the *Companies Act 1993* and in accordance with the Panel's guidance notes

- continues to work closely with the Ministry of Business, Innovation and Employment (MBIE) to support the smooth and effective implementation of changes to the *Takeovers Act 1993* and the Code
- continues to work with other agencies to improve the confidence and participation of investors in New Zealand's capital markets
- continues to promote understanding and raise the public profile of the Code amongst shareholders, advisers and acquirers
- understands the direct and indirect costs of the Panel's actions on businesses and the wider economy.

General expectations and good governance

As part of your role in governing a high-performing entity, I expect you to:

- maintain an effective board
- be the primary monitor of the entity's performance and maintain effective relationships with my advisors in MBIE
- operate a 'no surprises' policy.

These expectations are set out in more detail in the **Annex 1** to this letter.

I am confident the Panel will continue to work constructively with the Government to help realise these priorities. In particular, please continue to work closely with officials to share information about the impacts of COVID-19, to help ensure policy settings give the best chance for delivering a revitalised New Zealand economy.

In addition, I expect you to follow the advice provided in the updated *Enduring Letter of Expectations* from the Minister of Finance and Minister of State Services to Statutory Crown Entities in 2019 and the Ministry of Business, Innovation and Employment's *Monitoring Arrangements for MBIE-monitored Crown entities*.

Strategy and performance information

All Crown entities must prepare an annual Statement of Performance Expectations (SPE) and have an approved Statement of Intent (SOI). The annual SPE should provide a clear performance framework and support excellent reporting to Parliament and the public on results.

For this year, I do not expect to see a new draft SOI, as the current SOI can remain in place until further notice. However, please advise me as soon as is practicable if your work on the future of the Panel indicates that a new SOI should be developed.

Response

Your advice by **30 March 2021** on how you propose to respond to the expectations set out in this letter would be appreciated. I would be happy to consider approaches that best achieve our collective aims and work well for the Panel. In the first instance, please discuss your proposed response with MBIE.

I look forward to continuing our working relationship over the coming year.

Yours sincerely



Hon Dr David Clark
Minister of Commerce and Consumer Affairs

Copy to: Andrew Hudson
Chief Executive, Takeovers Panel

James Hartley
General Manager, Commerce, Consumers and Communications, MBIE

Annex 1: General expectations and good governance

Effective board

Ensuring the board is, and remains, high-performing is essential. In 2018 you provided a Panel Evaluation Report prepared by Propero Consulting Limited and, in your letter of 5 December 2018, you identified ways to improve succession planning and enhance Panel meetings. While I do not expect the board to carry out a full self-assessment in 2021, I expect the board to report back on how it has integrated the three new Panel members appointed in 2019.

I also expect you to continue providing MBIE with your view of the competency mix you need to work well as a board, along with your thoughts on upcoming appointments and any candidate attributes to target. I understand that there are a number of panel members whose terms are ending in the next financial year. I encourage the Panel to think ahead as succession planning will be especially important this year.

Effective monitoring of entity performance by board and relationship with MBIE

In addition to setting and driving a strategy that delivers on government priorities, your board is the most important monitor of entity performance. I expect the board to provide me and MBIE with high-quality information and analysis on entity performance against your strategic plan, implications for future performance, and risks and opportunities facing the entity.

I also expect you to have a constructive working relationship with your monitor within MBIE.

No surprises

The Government has a 'no surprises' policy. No surprises means that the Government expects a board to:

- be aware of any possible implications of their decisions and actions for wider government policy issues
- advise the responsible Minister and the entity's monitor of issues that may be discussed in the public arena or that may require a ministerial response, preferably ahead of time or otherwise as soon as possible, and
- inform the Minister in advance of any major strategic initiatives.

I expect to hear about emerging issues and what major actions the board is considering. My reactions will be based on a range of factors, including the benefits of new initiatives and of taking different approaches to achieve our goals.